



November 2, 2000

Ms. Cynthia B. Garcia  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2000-4265

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140873.

The City of Fort Worth (the "city") received a request for three categories of information related to complaints filed with the city's Human Relations Commission (the "HRC"). You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with sections 21.303, 21.304 and 21.305 of the Texas Labor Code, as well as sections 327.9 and 327.10 of title 40 of the Texas Administrative Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You inform us that the HRC was created pursuant to title 21 of the Labor Code. *See* Labor Code § 21.152 (providing for the creation of local commissions). We conclude that the HRC is a local agency authorized by sections 21.152 *et. seq.* of the Labor Code to investigate complaints, as provided by section 21.204 of the Labor Code. Section 21.204 relates to investigations by the Commission on Human Rights.

Section 21.304 of the Labor Code provides:

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.

Section 21.305 of the Labor Code is entitled "Access to Commission Records" and provides:

(a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

The Texas Commission on Human Rights has adopted rules governing access to commission records at 40 TAC § 327.9. This provision is entitled "Access to Commission Records" and provides:

Pursuant to the limitations established by the §§Texas Labor Code, 21.304-21.305 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 8.02(a)), the executive director shall, on written request of a party to a complaint filed under the §Texas Labor Code, 21.201 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 6.01(a)), allow the party access to the commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

(1) following the final action of the commission, a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or

(2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law.

The rules further provide at section 327.10:

(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the §§Texas Labor Code, 21.201-21.207 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 6.01), except as necessary to the conduct of a proceeding under this Act.

(b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory

practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

The requestor in this case is a party to the proceeding for which you have submitted records to this office contained in Exhibit C. You inform us, however, that such records are related to an investigation which is open, and that no final action has been taken by the HRC resulting from this investigation. You further inform us that there is no civil action filed in federal court alleging a violation of federal law related to this complaint. On this basis, we conclude that the information contained in Exhibit C must be withheld from the requestor under section 552.101 of the Government Code, in conjunction with section 21.305 of the Labor Code and rules adopted thereunder.

With regard to the submitted information contained in Exhibit D, you inform us that, although the case to which that information relates is closed, the requestor was not a party to that case. Upon review of the information in Exhibit D, we conclude that it is confidential under the provisions of the Texas Labor and Administrative Codes noted above, and it is therefore excepted from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/pr

Ref: ID# 140873

Encl. Submitted documents

cc: Mr. Charles K. Reed  
Minute Man of Texas  
1112-B East 1<sup>st</sup> Street  
Fort Worth, Texas 76102  
(w/o enclosures)